

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 1:13-cv-10559

WARREN L. SMITH AND KAREN F.	:	
SMITH,	:	
	:	
Plaintiffs,	:	MDL No. 2419
	:	Master Docket No. 1:13-md-2419-FDS
v.	:	
	:	Honorable F. Dennis Saylor
	:	
UNIFIRST CORPORATION, A/D/B/A	:	
UNICLEAN CLEANROOM	:	DEMAND FOR JURY TRIAL
SERVICES,	:	
	:	
Defendants.	:	

SHORT FORM COMPLAINT

Plaintiffs, Warren L. Smith and Karen F. Smith, complaining against the Defendants, allege as follows:

FIRST COUNT

1. Pursuant to MDL Order No. 7, entered in In Re: New England Compounding Pharmacy, Inc. Products Liability Litigation, Master Docket No. 1:13-md-2419-FDS, the undersigned counsel hereby submit this Short Form Complaint and Jury Demand against the Defendants, and adopt and incorporate by reference the allegations in the Plaintiffs' Master Complaint, with attachments, and any and all amendments thereto.

2. Plaintiff, Warren L. Smith, is a resident of the State of Michigan.

3. Plaintiff brings this action:

On behalf of himself.

4. Additionally, Karen F. Smith, is the:

Spouse of Warren L. Smith, is a resident of the State of Michigan, and is hereby named as an additional plaintiff, and claims damages.

5. Plaintiffs assert that the Plaintiff, Warren L. Smith, was administered New England Compounding Pharmacy, Inc. (“NECC”) drug methylprednisolone acetate (hereinafter referred to as “NECC drug”), causing injuries and damages.

6. The aforesaid administration of the NECC drug occurred on or about: August 13, 2012 and September 10, 2012 by Louis Bojrab, M.D. at Michigan Pain Specialists in Brighton, Michigan.

7. Plaintiffs adopt and incorporate by reference the following Causes of Action asserted against the Defendants in the Master Complaint:

- COUNT II: NEGLIGENCE AND GROSS NEGLIGENCE (Against UniFirst)
- COUNT III: NEGLIGENCE AND GROSS NEGLIGENCE (Against Clinic Related Defendants)
- COUNT IV: VIOLATION OF CONSUMER PROTECTION STATUTES (Against Clinic Related Defendants)

Plaintiffs allege violation of the following consumer protection statute(s):

- COUNT VI: VIOLATION OF M.G.L. C. 93A (Against UniFirst)
- COUNT VII: BATTERY (Against Clinic Related Defendants)
- COUNT VIII: FAILURE TO WARN (Against Clinic Related Defendants)
- COUNT IX: PRODUCT LIABILITY CLAIMS (Against Clinic Related Defendants)
- COUNT X: AGENCY (Against Clinic Related Defendants)
- COUNT XI: CIVIL CONSPIRACY (Against Clinic Related Defendants)
- COUNT XII: WRONGFUL DEATH PUNITIVE DAMAGES (Against UniFirst and Clinic Related Defendants)

COUNT XIII: LOSS OF CONSORTIUM (Against UniFirst and Clinic Related Defendants)

COUNT XIV: PUNITIVE DAMAGES (Against UniFirst)

8. Plaintiffs have sent the pre-suit demand requirement necessary to bring the claim against UniFirst set forth below, as required under Mass. Gen. Laws. Ann. Ch. 93A et seq., however the timeframe for asserting the claim has not passed. *See* attached copy of the UniFirst demand letter dated December 17, 2013 at Exhibit 1. Plaintiffs will seek leave to amend to assert a claim under Mass. Gen. Laws Ann. Ch. 93A et seq., after the time period for giving notice has expired.

9. Plaintiff, Warren L. Smith, claims to have suffered the following injuries as a result of the administration of NECC's drug: on October 19, 2012, Plaintiff was admitted to St. Joseph Mercy Hospital in Ann Arbor, Michigan with symptoms of severe headaches, severe back and leg pain, and difficulty walking. At that time, he was diagnosed and treated for fungal meningitis, secondary to contaminated steroid injections. He remained hospitalized for 10 days until he was discharged on October 29, 2012. While Plaintiff's symptoms initially improved following his hospital visit, on November 7, 2012 he was again admitted to St. Joseph's Mercy Hospital for the same symptoms. At that time, an MRI of Plaintiff's spine revealed dural thickening and enhancement compatible with meningitis. He was advised he would need surgery to remove the abscess. On November 8, 2012, Mr. Smith underwent a lumbar laminectomy, epidural phlegmon and exploration at St. Joseph Mercy Hospital. The surgery confirmed fungal epidural abscess. Plaintiff remained hospitalized for two months until finally being discharged on January 4, 2013. Since that time, Plaintiff has been completely debilitated. He can barely walk and has been rendered a shell of the man he used to be. Plaintiff has suffered unspeakable

personal injuries, physical and emotional distress, and incurred medical and other expenses as a direct result of being injected with the contaminated NECC drug. Furthermore, since October 2012, Plaintiff has been unable to return to work and oversee his hardware business.

10. Plaintiff, Warren L. Smith, suffered the following damages as a result of the administration of NECC's drug: while being treated for fungal meningitis, Plaintiff experienced mental, emotional, physical, and economic damages. He endured surgical procedures, painful medical treatments, trauma, back pain, headaches, vomiting, photosensitivity, trouble walking, development of an abscess, and exacerbation of pre-existing medical conditions. Plaintiff has incurred and will incur future expenses to obtain medical treatment and care for his injuries. As a direct result of being injected with a contaminated dose of methylprednisolone acetate, Plaintiff suffered injuries, conscious pain and suffering, lost wages, emotional distress, economic loss, and other damages. Plaintiff is also entitled to punitive damages.

11. The additional designated plaintiff, Karen F. Smith, has suffered the following: Plaintiff, Karen F. Smith, as a result of the injuries sustained by Plaintiff, Warren L. Smith, described above, has suffered loss of consortium. Mrs. Smith has suffered mentally, emotionally, and physically watching her husband suffer and feeling frustrated at being unable to help him feel better. Plaintiff has also suffered financially because she has had to take a leave of absence from work to care for and support her husband. She has suffered and will continue to suffer, mental anguish, the loss of support, love, companionship, affection, society, sexual relations, solace, and other damages. In addition, the marital relationship between Mr. and Mrs. Smith has been damaged as a direct result of Mr. Smith being injected with contaminated methylprednisolone acetate.

WHEREFORE, Plaintiffs demand Judgment against the Defendants awarding compensatory damages, punitive damages, attorneys' fees, interest, cost of suit, and such further relief as the Court deems equitable and just.

Plaintiffs reserve the right to amend this Complaint to add allegations and claims against individuals or entities currently omitted (in light of the Court's order permitting a Master Complaint naming defendants affiliated with NECC and currently participating in mediation by December 20, 2013) and to add or amend allegations against Defendants named herein based, in part, on further discovery.

SECOND COUNT

12. Plaintiffs re-allege and incorporate by reference each of the foregoing paragraphs as if set forth at length herein.

13. Plaintiffs incorporate by reference the entirety of Plaintiffs' Complaint and Jury Demand filed in the United States District Court for the District of Massachusetts on March 11, 2013, attached hereto as Exhibit 2.

WHEREFORE, Plaintiffs demand Judgment against the Defendants awarding compensatory damages, punitive damages, attorneys' fees, interest, costs of suit, and such further relief as the Court deems equitable and just.

JURY DEMAND

Plaintiffs hereby demand a trial by jury.

Respectfully Submitted,

**PLAINTIFFS WARREN L. SMITH AND KAREN F.
SMITH**

By Their Attorneys,

/s/ Kimberly A. Dougherty

Robert K. Jenner (Maryland) *Pro Hac Vice to Be Filed*

Kimberly A. Dougherty (BBO# 658014)

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Date: December 20, 2013